

**§ 1212.3 Application for the exercise of discretion under former section 212(c).**

(a) *Jurisdiction.* An application by an eligible alien for the exercise of discretion under former section 212(c) of the Act (as in effect prior to April 1, 1997), if made in the course of proceedings under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as in effect prior to April 1, 1997), shall be submitted to the immigration judge by filing Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile.

(b) *Filing of application.* The application may be filed prior to, at the time of, or at any time after the applicant's departure from or arrival into the United States. All material facts or circumstances that the applicant knows or believes apply to the grounds of excludability, deportability, or removability must be described in the application. The applicant must also submit all available documentation relating to such grounds.

(c) [Reserved]

(d) *Validity.* Once an application is approved, that approval is valid indefinitely. However, the approval covers only those specific grounds of excludability, deportability, or removability that were described in the application. An applicant who failed to describe any other grounds of excludability, deportability, or removability, or failed to disclose material facts existing at the time of the approval of the application, remains excludable, deportable, or removable under the previously unidentified grounds. If the applicant is excludable, deportable, or removable based upon any previously unidentified grounds a new application must be filed.

(e) *Filing or renewal of applications before an immigration judge.* (1) An eligible alien may renew or submit an application for the exercise of discretion under former section 212(c) of the Act in proceedings before an immigration judge under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as it existed prior to April 1, 1997), and under this chapter. Such application shall be adjudicated by the immigration judge, without regard to whether the applicant previously has

made application to the district director.

(2) The immigration judge may grant or deny an application for relief under section 212(c), in the exercise of discretion, unless such relief is prohibited by paragraph (f) of this section or as otherwise provided by law.

(3) An alien otherwise entitled to appeal to the Board of Immigration Appeals may appeal the denial by the immigration judge of this application in accordance with the provisions of § 1003.38 of this chapter.

(f) *Limitations on discretion to grant an application under section 212(c) of the Act.* An application for relief under former section 212(c) of the Act shall be denied if:

(1) The alien has not been lawfully admitted for permanent residence;

(2) The alien has not maintained lawful domicile in the United States, as either a lawful permanent resident or a lawful temporary resident pursuant to section 245A or section 210 of the Act, for at least seven consecutive years immediately preceding the filing of the application;

(3) The alien is subject to inadmissibility or exclusion from the United States under paragraphs (3)(A), (3)(B), (3)(C), (3)(E), or (10)(C) of section 212(a) of the Act;

(4) The alien has been charged and found to be deportable or removable on the basis of a crime that is an aggravated felony, as defined in section 101(a)(43) of the Act (as in effect at the time the application for section 212(c) relief is adjudicated), except as follows:

(i) An alien whose convictions for one or more aggravated felonies were entered pursuant to plea agreements made on or after November 29, 1990, but prior to April 24, 1996, is ineligible for section 212(c) relief only if he or she has served a term of imprisonment of five years or more for such aggravated felony or felonies, and

(ii) An alien is not ineligible for section 212(c) relief on account of an aggravated felony conviction entered pursuant to a plea agreement that was made before November 29, 1990; or

(5) The alien is deportable under former section 241 of the Act or removable under section 237 of the Act on a

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ground which does not have a statutory counterpart in section 212 of the Act.

(g) *Relief for certain aliens who were in deportation proceedings before April 24, 1996.* Section 440(d) of Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) shall not apply to any applicant for relief under this section whose deportation proceedings were commenced before the Immigration Court before April 24, 1996.

(h) *Availability of section 212(c) relief for aliens who pleaded guilty or nolo contendere to certain crimes.* For purposes of this section, the date of the plea agreement will be considered the date the plea agreement was agreed to by the parties. Aliens are not eligible to apply for section 212(c) relief under the provisions of this paragraph with respect to convictions entered after trial.

(1) *Pleas before April 24, 1996.* Regardless of whether an alien is in exclusion, deportation, or removal proceedings, an eligible alien may apply for relief under former section 212(c) of the Act, without regard to the amendment made by section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996, with respect to a conviction if the alien pleaded guilty or *nolo contendere* and the alien's plea agreement was made before April 24, 1996.

(2) *Pleas between April 24, 1996 and April 1, 1997.* Regardless of whether an alien is in exclusion, deportation, or removal proceedings, an eligible alien may apply for relief under former section 212(c) of the Act, as amended by section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996, with respect to a conviction if the alien pleaded guilty or *nolo contendere* and the alien's plea agreement was made on or after April 24, 1996, and before April 1, 1997.

(3) *Please on or after April 1, 1997.* Section 212(c) relief is not available with respect to convictions arising from plea agreements made on or after April 1, 1997.

[56 FR 50034, Oct. 3, 1991, as amended at 60 FR 34090, June 30, 1995; 61 FR 59825, Nov. 25, 1996; 66 FR 6446, Jan. 22, 2001; 69 FR 57834, Sept. 28, 2004]

#### § 1212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).

(a) *Applications under section 212(d)(3)(A)*—(1) *General.* District directors and officers in charge outside the United States in the districts of Bangkok, Thailand; Mexico City, Mexico; and Rome, Italy are authorized to act upon recommendations made by consular officers for the exercise of discretion under section 212(d)(3)(A) of the Act. The District Director, Washington, DC, has jurisdiction in such cases recommended to the Service at the seat-of-government level by the Department of State. When a consular officer or other State Department official recommends that the benefits of section 212(d)(3)(A) of the Act be accorded an alien, neither an application nor fee shall be required. The recommendation shall specify:

(i) The reasons for inadmissibility and each section of law under which the alien is inadmissible;

(ii) Each intended date of arrival;

(iii) The length of each proposed stay in the United States;

(iv) The purpose of each stay;

(v) The number of entries which the alien intends to make; and

(vi) The justification for exercising the authority contained in section 212(d)(3) of the Act.

If the alien desires to make multiple entries and the consular officer or other State Department official believes that the circumstances justify the issuance of a visa valid for multiple entries rather than for a specified number of entries, and recommends that the alien be accorded an authorization valid for multiple entries, the information required by items (ii) and (iii) shall be furnished only with respect to the initial entry. Item (ii) does not apply to a bona fide crewman. The consular officer or other State Department official shall be notified of the decision on his recommendation. No appeal by the alien shall lie from an adverse decision made by a Service officer on the recommendation of a consular officer or other State Department official.

(2) *Authority of consular officers to approve section 212(d)(3)(A) recommendations pertaining to aliens inadmissible under section 212(a)(28)(C).* In certain